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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

FIRST UNITARIAN CHURCH OF LOS )  
ANGELES; ACORN ACTIVE MEDIA; BILL OF )  
RIGHTS DEFENSE COMMITTEE; CALGUNS )  
FOUNDATION, INC.; CALIFORNIA )  
ASSOCIATION OF FEDERAL FIREARMS )  
LICENSEES, INC.; CHARITY AND SECURITY )  
NETWORK; COUNCIL ON AMERICAN )  
ISLAMIC RELATIONS-CALIFORNIA; )  
COUNCIL ON AMERICAN ISLAMIC )  
RELATIONS-OHIO; COUNCIL ON )  
AMERICAN ISLAMIC RELATIONS- )  
FOUNDATION, INC.; FRANKLIN ARMORY; )  
FREE PRESS; FREE SOFTWARE )  
FOUNDATION; GREENPEACE, INC.; HUMAN )  
RIGHTS WATCH; MEDIA ALLIANCE; )  
NATIONAL LAWYERS GUILD; NATIONAL )  
ORGANIZATION FOR THE REFORM OF )  
MARIJUANA LAWS, CALIFORNIA CHAPTER;) )  
PATIENT PRIVACY RIGHTS; PEOPLE FOR )  
THE AMERICAN WAY; PUBLIC )  
KNOWLEDGE; SHALOM CENTER; )  
STUDENTS FOR SENSIBLE DRUG POLICY; )  
TECHFREEDOM; and UNITARIAN )  
UNIVERSALIST SERVICE COMMITTEE, )

Case No: 3:13-cv-03287 JSW

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO STAY  
THE INITIAL CASE  
MANAGEMENT CONFERENCE  
AND THE DEADLINE FOR  
RESPONDING TO THE  
COMPLAINT**

Hon. Jeffrey S. White  
Courtroom 11 - 19th Floor

Plaintiffs.

V.

NATIONAL SECURITY AGENCY and KEITH B. ALEXANDER, its Director, in his official and individual capacities; the UNITED STATES OF AMERICA; DEPARTMENT OF JUSTICE and ERIC H. HOLDER, its Attorney General, in his official and individual capacities; Acting Assistant Attorney General for National Security JOHN P. CARLIN, in his official and individual capacities; FEDERAL BUREAU OF INVESTIGATION and JAMES B. COMEY, its Director, in his official and individual capacities; ROBERT S. MUELLER, former Director of the FEDERAL BUREAU OF INVESTIGATION, in his individual capacity; JAMES R. CLAPPER, Director of National Intelligence, in his official and individual capacities, and DOES 1-100,

Defendants.

1 Defendants have moved for a stay of three litigation events: a) their obligation to meet  
 2 and confer with plaintiffs to prepare a joint case management conference statement; b) the initial  
 3 case management conference with the Court; and c) their obligation to answer or otherwise  
 4 respond to the complaint. ECF No. 12. Defendants' motion to stay these three events because of  
 5 Congress' failure to appropriate funds should be denied.

6 Plaintiffs' lawsuit seeks redress for ongoing unlawful conduct by defendants, not  
 7 completed acts that have ended. Defendants' unlawful conduct continues despite the  
 8 government shutdown. Notwithstanding the lack of appropriations, defendants are continuing  
 9 the bulk collection each day of all the telephone calling records of plaintiffs and hundreds of  
 10 millions of other Americans. Department of Justice lawyers continue to work at that task,  
 11 including preparing the application for a renewal of the current FISA Court telephone calling  
 12 records bulk collection order, which expires on or about October 17, 2013. *See* Appendix A  
 13 attached hereto, U.S. Department of Justice FY 2014 Contingency Plan at 6 & Table 2 (showing  
 14 that 91% of DOJ's National Security Division employees are excepted from furlough to, inter  
 15 alia, "represent the Intelligence Community before the Foreign Intelligence Surveillance Court,  
 16 which will remain open to facilitate the national security activities of United States in a manner  
 17 consistent with the law").

18 If it is essential that the spying continue despite the lack of appropriations, then it is  
 19 equally essential that the question of whether the spying is lawful also go forward. The rule of  
 20 law, and the protection of the civil liberties guaranteed by the Constitution, are every bit as  
 21 essential to the preservation of American democracy as are the NSA's spying activities.

22 The Ninth Circuit has made clear that the civil litigation system, and plaintiffs'  
 23 constitutional rights, cannot be suspended because of Congress' failure to appropriate funds:  
 24 "[T]he availability of constitutional rights does not vary with the rise and fall of account balances  
 25 in the Treasury. Our basic liberties cannot be offered and withdrawn as 'budget crunches' come  
 26 and go, nor may they be made contingent on transitory political judgments regarding the  
 27 advisability of raising or lowering taxes, or on pragmatic or tactical decisions about how to deal  
 28 with the perennial problem of the national debt. In short, constitutional rights do not turn on the

1 political mood of the moment, the outcome of cost/benefit analyses or the results of economic or  
 2 fiscal calculations. Rather, our constitutional rights are fixed and immutable, subject to change  
 3 only in the manner our forefathers established for the making of constitutional amendments.”  
 4 *Armster v. U.S. Dist. Court for the Cent. Dist. of California*, 792 F.2d 1423, 1429 (9th Cir. 1986)  
 5 (holding that civil jury trials may not be suspended during lapses in appropriations).

6 Denial of defendants’ motion will have no adverse consequences for defendants or  
 7 defense counsel.<sup>1</sup> Upon denial of the motion, defense counsel automatically will be  
 8 bureaucratically reclassified as employees excepted from furlough and instead of having to sit at  
 9 home will be authorized to work productively on this lawsuit. “If a court denies a litigator’s  
 10 request to postpone a case and orders it to continue, the litigation will become an excepted  
 11 activity that can continue during the lapse.” Appendix A attached hereto, U.S. Department of  
 12 Justice FY 2014 Contingency Plan at 7.

13 For the foregoing reasons, plaintiffs respectfully request that defendants’ motion for a  
 14 stay be denied.

15  
 16 DATED: October 8, 2013

Respectfully submitted,

17 /s Richard R. Wiebe

18 CINDY COHN  
 19 LEE TIEN  
 KURT OPSAHL  
 20 MATTHEW ZIMMERMAN  
 MARK RUMOLD  
 21 DAVID GREENE  
 JAMES S. TYRE  
 22 ELECTRONIC FRONTIER FOUNDATION

23 \_\_\_\_\_  
 24 <sup>1</sup> Plaintiffs sympathize with the plight of defense counsel, and if this were an ordinary instance  
 25 where defense counsel faced conflicting scheduling obligations, plaintiffs would of course seek  
 26 to accommodate defense counsel as plaintiffs have done in the past. But this is an instance  
 27 where defendant United States has forced idleness upon its counsel, creating a situation in which  
 the lawyers who perpetuate the program are still working, but the lawyers who defend challenges  
 28 to the lawfulness of the program are not.

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# APPENDIX A

(Available at <http://www.justice.gov/jmd/publications/doj-contingency-plan.pdf>)

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**U.S. Department of Justice  
FY 2014 Contingency Plan**

The Department of Justice (DOJ or the Department) has developed a Contingency Plan to be implemented in the event of a lapse in appropriations.

The Antideficiency Act restricts the Federal Government's ability to obligate funds in advance of appropriations or beyond appropriated levels. If the Department is faced with a lapse in appropriations it will only continue the following categories of activities:

1. Those funded by a source that has not lapsed, such as permanent indefinite appropriations and carryover of no-year funds appropriated in a prior year;
2. Those for which there is an express authority to continue during an appropriations lapse;
3. Those for which authority to continue during an appropriations lapse arises by necessary implication;
4. Those related to the discharge of the President's constitutional duties and powers; and
5. Those related to "emergencies involving the safety of human life or the protection of property," *i.e.*, where there is a reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question.

The Department of Justice is comprised of about 40 components that have a broad array of national security, law enforcement, and criminal justice system responsibilities. The Department's mission is to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

Therefore, a significant portion of the Department's mission involves the protection of human life and property, and primarily for this reason, the Department has a high percentage of activities and employees that are excepted from the Antideficiency Act restrictions and can continue during a lapse in appropriations. Other activities and employees are excepted because they are funded with multi-year or no-year appropriations, or because they are Presidential appointees.

The Plan assumes a 5-day funding hiatus for planning purposes. Depending upon the actual duration of the shutdown, the Department may need to revisit the plan and submit an amended version.

The Department estimates that no more than one-half day will be needed to complete shutdown activities.

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## Agency Summary:

The total number of agency employees expected to be on-board before implementation of this Contingency Plan is 114,486 (see attached Table 2).<sup>1</sup> An estimated total of 96,300 agency employees will be excepted from furlough under the plan, as shown in Table 1 below. Note that this amount includes 6,428 employees whose compensation is financed by a funding source that will not lapse.

**Department of Justice Contingency Plan Exceptions – FY 2014 – Table 1**  
**Employees Excepted from Furlough**

		<b>Total Excepted Employees</b>
<b>Categories</b>		<b>FY 2014</b>
Category 1 <sup>2</sup>	Employees whose compensation is financed by a resource other than annual appropriation	6,428
Category 2	Employees necessary to perform activities expressly authorized by law to continue during a lapse in appropriations	864
Category 3	Employees necessary to perform activities necessarily implied by law	14,737
Category 4	Employees necessary to the discharge of the President's constitutional duties and powers	—
Category 5	Employees necessary to protect life and property	74,271
<b>Total</b>		<b>96,300</b>

The Department's plan is consistent with Office of Legal Counsel (OLC) opinions and Office of Management and Budget (OMB) guidance and conforms to the following general principles:

The law enforcement capacity of the U.S. Government should not be impaired or perceived to be impaired. To do so could constitute an imminent threat to the safety of human life and the protection of property.

Component heads are to be conservative in designating employees as "excepted," especially those in headquarters or other "overhead" functions and occupations. Also, in the event of a prolonged furlough, it will be possible to bring some

<sup>1</sup> Onboard staffing data are derived from DOJ's payroll system and reflect information from pay period 17, ending September 7, 2013. Data excludes Public Health Service (PHS) employees working in the Federal Prison System.

<sup>2</sup> Note that this number includes employees funded with carryover multi-year and no-year funding appropriated in prior years. The number of excepted employees in this category may decrease over the course of an appropriations lapse as carryover funding is depleted.



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employees back to work if the need for their services becomes critical, and to furlough others as conditions change.

Ancillary support services will be maintained only to the extent necessary to support excepted operations. These ancillary functions include legislative affairs and other congressional support activities, public affairs activities, and community outreach, which may be conducted only to the extent the failure to perform those functions would prevent or significantly damage the functioning of a funded component, the operations of other funded parts of the government, or the performance of an excepted function.

Employees may not be reassigned or given new duties, and offices may not be restructured, in order to move individuals from a non-excepted function into an excepted function.

With respect to litigation, the Department's plan assumes that the Judicial Branch will continue to operate through the furlough.<sup>3</sup> Therefore:

Criminal litigation will continue without interruption as an activity essential to the safety of human life and the protection of property.

Civil litigation will be curtailed or postponed to the extent that this can be done without compromising to a significant degree the safety of human life or the protection of property. Litigators will need to approach the courts and request that active cases, except for those in which postponement would compromise to a significant degree the safety of human life or the protection of property, be postponed until funding is available. If a court denies such a request and orders a case to continue, the government will comply with the court's order, which would constitute express legal authorization for the activity to continue. The Department will limit its civil litigation staffing to the minimum level needed to comply with the court's order and to protect life and property.

Assumptions relating to training activities (in components whose funding has lapsed) are as follows:

In order to ensure the proper execution of the Department's emergency functions, components may determine that the training of new employees in positions that have been designated as "emergency" is an excepted function.

To the extent that the training of new "emergency" employees is in process or about to begin when a lapse occurs, components should consider whether a short delay (for example, over the weekend) in the training will compromise emergency functions. If such a delay will not compromise emergency functions, components

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<sup>3</sup> Guidance issued by the Administrative Office of the U.S. Courts in September 2013 indicates that federal courts will continue to hear and decide cases without interruption.

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should consider keeping the employees at the training center but delaying the training itself, or not sending the employees to the training during the brief delay. If at any point the component determines that the delay in training might impact emergency functions, the training should resume.

New employees who are not in positions designated as “emergency” should not start work during the lapse and should not be trained.

In-service training of current employees, even those excepted from furlough, will be cancelled.

Training of state and local officers will be discontinued for the duration of the lapse in appropriations.

As a general rule, training for international law enforcement officers occurring in the United States should be cancelled. However, with respect to training of international law enforcement officers abroad (such as the training of officers who will be working in a combat zone), components should use their judgment to determine whether such training needs to occur immediately in order to protect human life or property. If so, such training may continue.

Department of Justice programs funded with permanent indefinite appropriations or other funding not subject to annual appropriation (e.g., Diversion Control, Health Care Fraud and Abuse Control mandatory, Debt Collection, Assets Forfeiture Fund, Federal Prison Industries) are displayed in the plan as excepted positions because their funding is not dependent upon an enacted appropriation. Also, the Bureau of Prisons’ (BOP) Buildings and Facilities and Commissary accounts have multi-year authority and have adequate carryover funding to meet expenses during a lapse in appropriations. Employees paid from these funding sources are not dependent upon an enacted appropriation and are therefore considered excepted. Also included in the total are Presidential Appointees, who are excepted from furlough.<sup>4</sup> This does not include non-career SES and Schedule C employees.

#### Individual DOJ Component Summaries:

Following is a synopsis of the components’ plans for the Department of Justice, including the nature of the agency activities in which excepted employees will be engaged. The attached Table 2 provides the total number of employees in the component to be on-board before implementation of the plan; the total number of component employees excepted from furlough under each of the recognized exceptions; and the agency’s legal basis for each of its determinations to except employees.

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<sup>4</sup> Note: Former career Senior Executive Service (SES) appointees who receive a Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. § 3392(c). If SES leave benefits are so elected, such a Presidential Appointee would be subject to furlough under 5 CFR part 359, subpart H, unless otherwise excepted.

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- **General Administration (GA):** Accounts include the Department's Leadership and Senior Policy/Management Offices. This includes Presidential Appointees, who are not subject to furlough. The excepted employees will be providing overall Departmental leadership and policy management for ongoing operations that protect life and property and for other excepted activities during the lapse of appropriations.

The GA account also funds a portion of the functions and staff of the Justice Management Division (JMD). The excepted GA-funded JMD employees will provide Department-wide direction for staffs providing support for ongoing operations that protect life and property; direct support, including IT support, for Department-wide operations that protect life and property; and building security at the Main Justice Building. The Working Capital Fund is funded by reimbursements from a variety of sources, but primarily from sources that are appropriated annually and would not be available if there is a lapse in appropriations; therefore, only JMD employees performing excepted functions are excepted from furloughs. In addition, a number of JMD employees are funded by the Three Percent Fund for debt collection and the Assets Forfeiture Fund, which are not subject to annual appropriation, and thus these employees may continue to work during a lapse in appropriations.

JMD also oversees the Justice Information Sharing Technology and the Working Capital Fund Information Technology accounts. Excepted employees in these areas are needed to operate the 24/7 Justice Security Operations Center, which provides information security for the Department's systems. In addition, these employees are needed for information technology operations and systems that support ongoing law enforcement operations that will continue during any lapse in appropriations.

- **Executive Office for Immigration Review:** Excepted employees are needed to process all immigration cases and appeals involving detained aliens, including criminal aliens; provide Headquarters oversight of excepted functions; provide administrative support for excepted functions; and preserve jurisdictional viability of discrimination cases within the Administrative Law Judge function.
- **Office of the Pardon Attorney (OPA):** There are no employees excepted from furlough. OPA's mission is to assist the President in the exercise of his constitutional clemency power. Therefore, if an inmate facing execution in a capital case filed an application for commutation of sentence and appropriations lapsed, it is possible that some OPA employees would be excepted temporarily. Such applications for clemency are infrequent, but if one were to be pending during a lapse in appropriations, the exception for "discharge of the President's constitutional duties and powers" might in fact apply to OPA employees needed to timely investigate the application, prepare the report and recommendation on the case, and effectuate the President's decision under the Constitution to grant or deny clemency to the capital offender.
- **Office of the Inspector General:** As a Presidential Appointee, the Inspector General is not subject to furlough. The excepted employees are needed to investigate

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allegations of bribery, fraud, abuse, civil rights violations and violations of other criminal laws and administrative procedures arising from the conduct of Department employees, contractors and grantees; support law enforcement functions; oversee emergency operations and provide legal advice and issue subpoenas; continue work on time-sensitive national security investigations; and provide security and administrative support for excepted personnel and emergency services.

- **U.S. Parole Commission (USPC):** The excepted USPC employees are needed to respond to requests for emergency warrants and process parole certificates. Due to the constitutional prohibitions against the suspension of the writ of habeas corpus, the USPC is assuming that this litigation will continue in all judicial districts. The Chairman and the Commissioners, as Presidential Appointees are not subject to furlough. They will be available to approve each warrant before issuance. USPC has jurisdiction over federal offenders who committed offenses before November 1, 1987, as well as all District of Columbia (DC) offenders. Much of the DC caseload is driven by requests for warrants as a result of violations of the terms and conditions of parole. In contrast to the federal system where the failure rate is about 20 percent, DC parolees have a failure rate of nearly 80 percent.
- **National Security Division (NSD):** As a Presidential Appointee, the Assistant Attorney General is not subject to furlough. The excepted employees are needed to ensure the Department's national security investigations and prosecutions continue, that the Department's national security activities are coordinated both within the Department and with other government agencies, and to represent the Intelligence Community before the Foreign Intelligence Surveillance Court, which will remain open to facilitate the national security activities of United States in a manner consistent with the law. NSD will also provide legal advice to the Intelligence Community with respect to ongoing national security matters, and oversee the Department's administration of the U.S. Government's authorities under the Foreign Intelligence Surveillance Act. In addition, excepted employees will continue work on pending counterterrorism, espionage, export control, and sanctions violations; coordinate and supervise the Department's international terrorism, domestic terrorism, and weapons of mass destruction matters; and continue to review Committee on Foreign Investment in the United States matters, including responding to time-sensitive inquiries regarding the national security implications of corporate conduct in compliance with National Security Agreements.
- **General Legal Activities (GLA):** The Solicitor General and the Assistant Attorneys General are Presidential Appointees, who are not subject to furlough. The GLA account includes the following components: Office of the Solicitor General, Tax Division, Criminal Division, Civil Division, Environment and Natural Resources Division, Office of Legal Counsel, Civil Rights Division, and INTERPOL Washington. The excepted employees are necessary to provide legal advice on ongoing excepted functions of the Executive Branch, including matters of national security and presidential authority, to the Attorney General, the Deputy Attorney General, others within the Department, the White House, the National Security

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Council, and the Departments of State and Defense. Excepted employee will also review Attorney General Orders, Executive Orders and Proclamations, and presidential memoranda and directives; ensure that criminal litigation continues uninterrupted; seek continuances for civil and appellate litigation, except as necessary for the immediate protection of life or property; proceed with civil and appellate litigation should attempts to secure continuances fail; provide administrative advice and resource allocation guidance to Civil Rights Prosecution personnel and the Assistant Attorney General, Civil Rights Division, in the event of civil disorder; respond to and investigate complaints of alleged criminal civil rights violations involving endangerment of life or property and handle complaints from institutionalized persons concerning life-threatening situations. Also, excepted employees are needed to provide uninterrupted communications among federal, state, local and international law enforcement entities in furtherance of, among other things, criminal investigations and the apprehension of fugitives and criminal and illegal aliens. If a court denies a litigator's request to postpone a case and orders it to continue, the litigation will become an excepted activity that can continue during the lapse.

- **Antitrust Division (ATR):** As a Presidential Appointee, the Assistant Attorney General is not subject to furlough. The excepted employees are needed to conduct or directly support ongoing criminal trials, prepare for criminal proceedings that have been scheduled for court (including the handling of arraignments, pleas, and sentencing hearings), and conduct or support ongoing civil litigation in which a continuance cannot be obtained. They will also prepare cases that must be filed due to Hart-Scott-Rodino or statute of limitations deadlines, only when an extension or waiver cannot be obtained and ATR leadership determines that allowing a proposed merger to go forward without objection would pose a reasonable likelihood of peril to property in which the United States has an immediate interest.
- **U.S. Attorneys:** As Presidential Appointees, U.S. Attorneys are not subject to furlough. Excepted employees are needed to address ongoing criminal matters and civil matters of urgency throughout the Nation. Criminal litigation will continue without interruption as an excepted activity to maintain the safety of human life and the protection of property. Civil litigation will be curtailed or postponed to the extent this can be done without compromising to a significant degree the safety of human life or the protection of property. If a court denies a litigator's request to postpone a case and orders it to continue, the litigation will become an excepted activity that can continue during the lapse. Headquarters support will be maintained only to the extent necessary to support current operations.
- **U.S. Trustees Program:** Excepted employees are needed to protect bankruptcy estate property through the appointment and oversight of fiduciaries and through other means. Excepted employees would be responsible for coordinating meetings of debtors and creditors as well as civil and criminal matters, including cases with the U.S. Attorneys and the Federal Bureau of Investigation. Attempts will be made to curtail or postpone appearances before the Bankruptcy Courts. Excepted employees

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would be limited to performing only those functions in which there is a definite risk of substantial property loss or violation of law.

- **Foreign Claims Settlement Commission:** As Presidential Appointees, the Commissioners are not subject to furlough.
- **U.S. Marshals Service:** As a Presidential Appointee, the Director and the U.S. Marshals are not subject to furlough.<sup>5</sup> The excepted employees are needed to carry out duties associated with judicial security; prisoner custody, security, and transportation; and fugitive apprehension. Some headquarters personnel are also excepted as their functions are critical to the support of Deputy U.S. Marshals in the field – this support includes integrity assurance, oversight of investigative operations and judicial security, tactical operations, witness security, and management functions that include law and policy, budget and finance, procurement, information technology, human resource administration, and security.
- **Community Relations Service (CRS):** As a Presidential Appointee, the Director is not subject to furlough. CRS provides critical assistance in resolving and preventing racial, ethnic and national origin community conflicts, violence, and civil disorder, and it helps communities struggling to recover in the aftermath of alleged violent hate crimes. A minimum number of employees are necessary to provide a rapid response to emergency situations to protect the safety of human life or the protection of property.
- **Interagency Crime and Drug Enforcement (ICDE):** DOJ components participating in the Organized Crime Drug Enforcement Task Force program (OCDETF) have excepted their ICDE-funded personnel from furlough as appropriate within their agency designations. OCDETF provides reimbursable funding to its member agencies to support the salaries and expenses of their participating personnel. A small number of Executive Office employees are needed to provide day-to-day administrative support to the nine member agencies of the OCDETF Co-Located Strike Forces and to the OCDETF Fusion Center (OFC), which also houses the Department's International Organized Crime Intelligence Operations Center (IOC-2). The nine Co-Located Strike Forces are designed to serve a dual purpose: they aggressively target the highest-level drug trafficking organizations; and they also function as a central point for gathering intelligence and disseminating investigative leads throughout the neighboring areas. The OFC is a comprehensive data center containing all drug and related financial intelligence information from all OCDETF-member investigative agencies and the Financial Crimes Enforcement Network.
- **Federal Bureau of Investigation (FBI):** As a Presidential Appointee, the Director is not subject to furlough. Excepted personnel are needed because all operations of the FBI are directed toward national security and investigations of violations of law

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<sup>5</sup> The current USMS Director has elected to retain SES leave benefits and is, therefore, subject to furlough unless otherwise excepted.



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involving protection of life and property. Thus, the FBI must be able to continue existing investigations, open new investigations, and respond to all contingencies which might arise during a lapse of appropriations. Accordingly, all FBI agents and support personnel in the field are considered excepted from furlough.

At FBI headquarters, the excepted personnel will provide direction and investigative support to all field operations and excepted headquarters functions. This includes personnel in the Criminal Justice Information Services Division, which provides fingerprint identification services to criminal and national security investigations, and the Records Management Division, which provides name check services to criminal and national security investigations. Excepted personnel also include nearly all federal employees supporting the National Instant Criminal Background Check System (NICS).

- **Drug Enforcement Administration (DEA):** As Presidential Appointees, the Administrator and Deputy Administrator are not subject to furlough.<sup>6</sup> All agents in DEA field organizations are excepted from furlough because they support active counternarcotics investigations. This encompasses 21 domestic divisions, 7 regional foreign divisions, critical tactical support groups including the El Paso Intelligence Center and the Special Operations Division, forensic sciences, and technical surveillance support. DEA investigations need to continue uninterrupted so that cases are not compromised and the health and safety of the American public is not placed at risk. In addition, some headquarters personnel are critical to the support of agents actively engaged in investigative actions in the field – this support includes agency direction and priorities, legal support, integrity assurance and oversight of investigations, and critical support of emergency field functions, such as coordination of joint efforts involving other federal, state, local and foreign agencies; 24/7 tactical Command Center, tactical analytical support to investigations, programs and operations worldwide; as well as worldwide support in the areas of financial management, contract oversight, personnel, and basic training. Headquarters support will be maintained only to the extent necessary to support current operations.

**DEA Diversion Control Fee Account:** All employees on-board are excepted since these positions are fully fee funded; therefore, all drug diversion control activities will continue. These activities include preventing, detecting, and investigating the diversion of controlled substances from legitimate channels, while ensuring an adequate and uninterrupted supply of controlled substances to meet legitimate needs.

- **Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF):** As a Presidential Appointee, the Director is not subject to furlough. Excepted employees include: all agents in ATF's field divisions, who conduct the full range of criminal investigations in the firearms, arson, explosives, alcohol and tobacco program areas; Industry

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<sup>6</sup> DEA's current Administrator and Deputy Administrator have elected to retain SES leave benefits and are, therefore, subject to furlough unless otherwise excepted.

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Operations Investigators who conduct compliance inspections of Federal firearms and Federal explosives licensees (including those mandated under the Safe Explosives Act), as well as application inspections; and other personnel who collect, review and analyze intelligence data in support of criminal investigations. Headquarters support will be maintained only to the extent necessary to support excepted operations.

- **Bureau of Prisons:** All staff at the Federal prisons, including Public Health Service Officers necessary to provide medical care of inmates, are considered excepted since they have direct daily inmate custody responsibilities. Employees are also needed to continue inmate custody responsibilities over some 38,700 inmates in contract facilities and process all new designations to federal prisons from the Courts. Regional and headquarters support will be maintained only to the extent necessary to support excepted operations. BOP's Buildings and Facilities, Prison Industries and Commissary accounts have multi-year authority and should have adequate carry over funding to meet expenses during a lapse in appropriations.
- **Grant Programs (Office of Justice Programs, Community Oriented Policing Services, Office on Violence Against Women):** As Presidential Appointees, the OVW and COPS Directors, and the Assistant Attorney General for OJP, are not subject to furlough. The grants awarded by the Department are funded from no-year appropriations, as are the employees who administer those grants. As a result, these activities may continue during a lapse as long as sufficient carryover funds remain.



TABLE 2. FY 2014 - DEPARTMENT OF JUSTICE - CONTINGENCY PLAN

Name	Total On-Board	Employees Excepted from furlough					% Excepted	% Not Excepted
		Total	Special Agent	Intel Analyst	Atty	Other Staff		
AFF	21	21	0	0	0	21	100%	0%
ATF	4,723	3,920	2,362	112	47	1,399	83%	17%
ATR	619	227	0	0	122	105	37%	63%
BOP	36,100	35,741	17,837	0	178	17,726	99%	1%
BOP B&F	99	99	0	0	0	99	100%	0%
Federal Prison Industries	1,049	1,049	0	0	0	1,049	100%	0%
Commissary Fund	688	688	0	0	0	688	100%	0%
CIV	1,310	374	0	0	274	100	29%	71%
COPS	117	117	0	0	6	111	100%	0%
CRM	955	694	0	0	467	227	73%	27%
CRS	46	4	0	0	2	2	9%	91%
CRT	634	182	0	0	134	48	29%	71%
DEA	9,429	8,203	4,732	732	62	2,677	87%	13%
ENRD	623	271	0	0	224	47	43%	57%
EOIR	1,339	402	0	0	153	249	30%	70%
FBI	35,385	29,875	13,336	2,718	135	13,686	84%	16%
FCSC	8	2	0	0	0	2	25%	75%
GA/WCF	1,099	213	0	0	0	213	19%	81%
INTERPOL	69	45	0	0	1	44	65%	35%
JIST	54	2	0	0	0	2	4%	96%
NSD	328	298	0	7	219	72	91%	9%
OCDETF	21	10	0	0	6	4	48%	52%
OIG	430	147	125	0	5	17	34%	66%
OJP	596	596	0	0	28	568	100%	0%
OLC	26	17	0	0	16	1	65%	35%
OPA	14	0	0	0	0	0	0%	100%
OSG	45	35	0	0	23	12	78%	22%
OVW	57	57	0	0	3	54	100%	0%
TAX	482	276	0	0	219	57	57%	43%
USA	11,382	7,226	28	66	4,811	2,321	63%	37%
USMS	5,506	5,117	3,946	10	10	1,151	93%	7%
USPC	69	9	0	0	0	9	13%	87%
USTP	1,163	383	0	0	167	216	33%	67%
<b>TOTAL</b>	<b>114,486</b>	<b>96,300</b>	<b>42,366</b>	<b>3,645</b>	<b>7,312</b>	<b>42,977</b>	<b>84%</b>	<b>16%</b>

Of the above total please identify the number of Detailees.

Detailees to other components and agencies	368	328						
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Categories		Employees Excepted from Furlough				
		Total	Agents	Intell. Anal.	Atty	Other
Category 1		6,428	396	156	431	5,445
Category 2		864	6	0	634	224
Category 3		14,737	787	2,415	126	11,409
Category 5		74,271	41,177	1,074	6,121	25,899
<b>TOTAL</b>		<b>96,300</b>	<b>42,366</b>	<b>3,645</b>	<b>7,312</b>	<b>42,977</b>

**Category 1** = Employees whose compensation is financed by a resource other than annual appropriations.

**Category 2** = Employees necessary to perform activities expressly authorized by law.

**Category 3** = Employees necessary to perform activities necessarily implied by law (including presidentially appointed, Senate-confirmed employees and the Director of the SMART Office in OJP).

**Category 5** = Employees necessary to protect life and property

**Notes:**

1/ DOJ does not use Category 4: Employees necessary to the discharge of the President's constitutional duties and powers; therefore, it is not reflected in this template. However, this category could apply to the Pardon Attorney, a staff attorney, and one support staffer if a petition for commutation of a death sentence required action during a lapse.

2/ Onboard staffing data are derived from DOJ's payroll system and reflect information from pay period 17, ending September 7, 2013. Data exclude Public Health Service (PHS) employees working in the Federal Prison System.